IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 17056 of 2004

Between:

1 Yedlapati Nageswara Rao, S/o.Kondaiah,
R/o.D.No.2-113, Rusthumbad Village, Narsapur Mandal,
West Godavari Dist.
2 Gendham Punyavathi, W/o.Manikyala Rao,
R/o.D.No.2-201, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
3 Pyvwada Subbayamma, W/o.Gopala Krishna,
R/o.D.No.2-155, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
4 Nandyala Ramanaiah, S/o.Veera RAghavulu,
R/o.D.No.2-163, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
5 Yedlapati Venkanna, S/o.Naganna,
R/o.D.No.2-112, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
6 Yedlapati Pellalamma, W/o.Mahankali,
R/o.D.No.2-125, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
7 Yedlapati Rama Rao, S/o.Naganna,
R/o.D.No.2-111, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
8 Yedlapati Vimaladevi, W/o.Suryanarayana,
R/o.D.No.2-142, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
9 Nandyala Satyanarayana, S/o.Ramanaiah,
R/o.D.No.2-165, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
10 Nandyala Pulla Rao, S/o.Ramanaiah,
R/o.D.No.2-166, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
11 Puli Narasimhaswami, S/o.Ramulu,
R/o.D.No.2-150, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.

12 Nandimipalli Lakshminarayanaraju, S/o.Satyanarayana,
R/o.D.No.10-99, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
13 Peritala Venamohana Rao, S/o.Satyanarayana Murthy,
R/o.D.No.10-102, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
14 Pothireddy Padma Kumari, W/o.Bhaskara Satyanarayana Rao,
R/o.D.No.9-1, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
15 Mothupalli Mangayamma, W/o.Ammi Raju,
R/o.D.No.2-143, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.
16 Vadugu Durga, W/o.Mutyala Rao,
R/o.D.No.10-141, Ponnapalli,
Narsapur Mandal, West Godavari Dist.
17 Kukkarlapati Venkate Suryanarayana, S/o.Tatarao,
R/o.D.No.2--12, Rajolu Lanka,
Narsapur Mandal, West Godavari Dist.
18 Kerna Radha, W/o.Ramadas,
R/o.D.No.3-87, Lakshmaneswaram,
Narsapur Mandal, West Godavari Dist.
19 Vadugu Sri Rama Murthy, S/o.Narasimham,
R/o.D.No.11-1-18/6, Narsapur Town,
West Godavari Dist.
20 Pappula Satyavathi, W/o.Krishna Murthy,
R/o.D.No.1-116, Rusthumbad Village,
Narsapur Mandal, West Godavari Dist.

..... PETITIONERS

AND

1 The Narsapuram Cooperative Urban Bank Ltd., Narsapuram, West Godavari District, represented by its In-charge Revenue Divisional Officer, Narsapur, West Godavari District.

2 The Deputy Registrar of Cooperative Societies, Bhimavaram, West Godavari District.
3 The Cooperative Sub-Registrar-Cum--sale officer, Narsapur Cooperative

Urban Bank Ltd., Narsapur, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus holding that the action of the respondents in auctioning the petitioner's dwelling houses bearing Door Nos.2-113, 2-201, 2-155, 2-163, 2-112, 2-125, 2-111, 2-142, 2-165, 2-166, 2-150 of Rusthumbad and Door Nos.10-99 of Rajol Lanka, Narsapur, D.No. 10-102 of Narsapur Town, 9-1 of Mogultur, D.No.2-143 of Rushthumbad, D.No.10-141 of Ponnapalli, 20-12 Rajol Lanka, D.No.3-87 of Lakshmaneswaram, D.No.11-1-18/6 of Narsapur town, D.No.1-116 of Rusthumbad,

Narsapur, West Godavari District, respectively, without giving any sale notice as contemplated under Rule 52 of A.P. Cooperative societies Rules 1964 is as illegal, arbitrary and violation of Articles 14 and 21 of the Constitution of India, and consequently direct the respondents not to proceed with the auction of the dwelling houses of the petitioners.

Counsel for the Petitioners: Mr. S. Lakshminarayana Reddy.

Counsel for the Respondent No.1: Smt. Bobba Vijaya Lakshmi.

Counsel for the Respondent Nos.2 and 3: GP for Cooperation

The Court at the stage of admission made the following:

O R D E R:

Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent-Bank.

The petitioners who are twenty in number filed this writ petition seeking a declaration that the action of the respondents in auctioning the petitioners' dwelling houses situated at Rusthumbad, Narsapur, West Godavari District, without giving any sale notice as contemplated under Rule 52 of the Andhra Pradesh Cooperative Societies Act and Rules, 1982, is arbitrary and illegal.

This Court, while directing notice before admission, granted interim order directing the respondents not to take any coercive steps against the petitioners.

Now, on behalf of the first respondent-Bank, a counter-affidavit has been filed stating that in pursuance of the awards passed against the petitioners, the first respondent-Bank has not initiated any execution proceedings so far. The allegation made by the petitioners

that the 1st respondent is conducting sale of their properties without any notice has been specifically denied. However, it is stated that against the awards passed under Section 62 as well as the certificates issued under Section 71 of the Act, though an effective alternative remedy is available under Section 76 of the Act, the petitioners have not availed the said remedy so far.

The fact that such awards have been passed against the petitioners herein under Section 62 of the Act is not disputed by the learned counsel for the petitioners. However, the learned counsel for the petitioners states that the petitioners have already paid substantive amounts alleged to be due under the Awards and, therefore, the respondents are not entitled to take any coercive steps against them on the basis of the recovery certificates issued under Section 71 of the Act.

It is not necessary for this Court to express any opinion on the said claim since in the counter-affidavit filed on behalf of the first respondent-Bank it is categorically stated that the respondents have not initiated any proceedings so far for recovery of the amount due from the petitioners. In the circumstances, I find force in the contention of the learned Counsel for the respondents that the writ petition is filed on mere apprehensions and that there is no cause of action as on today for filing the writ petition.

The writ petition is accordingly dismissed as premature granting leave and liberty to the petitioners to work out the appropriate remedy as available under law, in case necessity thereof arises. No costs.

(G. ROHINI, J)

Date: 10-11-2004

ghn

To

1 The Narsapuram Cooperative Urban Bank Ltd., Narsapuram, W.G. District, represented by its In-charge Revenue Divisional Officer, Narsapur, West Godavari District.

2 The Deputy Registrar of Cooperative Societies, Bhimavaram, W.G.Dist.

3 The Cooperative Sub-Registrar-Cum--sale officer, Narsapur Cooperative

Urban Bank Ltd.,Narsapur, West Godavari Dist.

4 Two C.Cs to the G.P. for Cooperation, High Court of A.P., Hyderabad

(OUT)

5 Two C.D copies